

Purchase/Sale Agreement Review Checklist

Explanation: This checklist is intended as guidance for reviews by both the buyer's and seller's attorneys and tax advisers of purchase/sale agreements to ensure critical issues are addressed in the document.

Purchase/sale agreements should normally cover the matters listed below, in addition to any other issues that apply to the particular transaction in question.

- Purchase/Sale Terms
- Amount of sales price
- Payment terms (such as installment payment provisions pursuant to a promissory note, the interest rate charged on deferred payments, contingent payment provisions, etc.)
- Any holdback or payment offset provisions

Note: The entire purchase price should be accounted for in the description of the consideration given for the stock or assets being sold.

Representations of Buyer and Seller

- Regarding ownership of assets being sold
- Regarding legal authority of individuals to conduct the transaction
- Regarding existence of actual and contingent liabilities
- Regarding liabilities secured by assets

Preclosing Obligations of Buyer and Seller

- Buyer's access to seller's records
- Seller's conduct of business as usual during preclosing period
- Seller's maintenance of adequate insurance during preclosing period
- Limitations on seller transactions that would diminish assets or otherwise harm the business during the preclosing period
- Buyer's provision of financial information
- Buyer's provision of information showing arrangements to secure adequate financing
- Buyer's agreement to maintain confidentiality

Preclosing Conditions

- Buyer ascertaining before closing that all seller representations are reasonably accurate and that there have been no material adverse changes in the financial condition or operations of the target
- Seller has obtained title insurance policies on all real property included in the deal
- Buyer has obtained assurance that lease rights are assignable
- The necessary governmental and regulatory approvals have been obtained
- Buyer's representations are reasonably accurate

- Buyer has obtained third-party guarantees for any debt established under the agreement

Closing Procedures—This part of the agreement specifies the property, payments, and documents that will be transferred between buyer and seller in completion of the transaction and the time and place of the closing meeting.

Postclosing Obligations—Generally, the postclosing obligations of the seller involve taking specified actions if seller representations turn out to be inaccurate and honoring any noncompete agreements. The buyer may also have postclosing obligations. (See paragraph 305.15.)

- Miscellaneous and Optional Provisions
- Which party will pay business broker's or finder's fees and transaction costs
- Arbitration procedures in the event of disputes between buyer and seller
- Which state's laws govern the transaction
- Circumstances whereby either party can terminate the agreement without penalty (such as litigation, inaccurate representations, or default by one of the parties regarding compliance with other terms of the purchase/sale agreement)

Note: The buyer should be particularly interested in negotiating language giving the desired flexibility to cancel the deal.